

Attorney Docket No. 7222-69477

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 75/457,081: MISCELLANEOUS DESIGN
(Super Bezel)

Published in the Official Gazette of June 5, 2001 in International Class 9

OLD WORLD INDUSTRIES, INC.,)	
and)	
SPLITFIRE INTERNATIONAL, INC.)	
)	Opposition No. 150,094
Opposers)	
)	
v.)	
)	
AUTO METER PRODUCTS, INC.,)	
)	
Applicant)	

**MOTION TO QUASH THE NOTICE OF TESTIMONY DEPOSITION OF RAM DATE
AND FOR ENTRY OF PROTECTIVE ORDER**

Applicant, Auto Meter Products, Inc. ("Auto Meter"), hereby moves to quash the Notice of Testimony Deposition served by Opposers on February 25, 2003, and moves for a Protective Order under Fed.R.Civ.P. 37 and TBMP §512 barring the testimony deposition of Opposers' new, undisclosed technical expert, Ram Date. Opposers' identification of this new expert is untimely, highly prejudicial, and he is proffered for improper rebuttal testimony.

Opposers filed this action to prevent the registration of Applicant's, Auto Meter's distinctive Super Bezel trademark. The Super Bezel is mounted on Auto Meter's high

performance, after market automotive gauges and tachometers.¹ For more than 30 years, Auto Meter has continuously and exclusively used, and extensively promoted, the Super Bezel as one of Auto Meter's most recognized trademarks. In 1995, Auto Meter registered the Super Bezel on the Supplemental Register and now seeks registration on the Principle Register. Opposers's alleged in their Notice of Opposition, *inter alia*, that the Super Bezel is merely functional.

On February 25, 2003, *three months after* the close of Opposers' testimony period and more that *eight months after* the close of discovery, Opposers served Auto Meter with a notice of the testimony deposition of a previously undisclosed, technical expert, Mr. Ram Date. (See Exhibit 2). Opposers did not identify *any* technical expert during discovery, or in supplemental production or testimony, notwithstanding Auto Meter's interrogatory specifically requesting the identification of all of Opposers' experts. See TBMP §419(7)(identities of experts must be disclosed). Opposers, moreover, did not even suggest that they were relying on technical or scientific evidence for *any* purpose in this case, even though Auto Meter provided advanced notice in discovery that it would rely on such evidence to rebut Opposers' functionality allegations.

Opposers' only comment on the purpose and relevance of their new expert is that Opposers "anticipate" that expert will testify on "functionality." Opposers, however, were required to fully support their functionality allegations with *all* of their competent evidence in their *case in chief*. Opposers' cannot proffer an undisclosed expert to shore up the deficiencies in their case on rebuttal as a matter of law.

¹ A copy of the published drawing of the Auto Meter registration application for the Super Bezel is attached as Exhibit 1.

Auto Meter also cannot properly prepare to cross-examine Opposers' new expert on his undisclosed opinions, and by withholding any mention of this new expert until their rebuttal period, Opposers deny Auto Meter *any* opportunity to respond with its own expert witness(es) to Opposers's new expert's surprise opinions. Thus, there can be no question that Auto Meter is highly and unfairly prejudiced by Opposers' untimely and improper proffer of its new expert.

Opposers' Notice of Testimony should be quashed and a protective order should be entered prohibiting any testimony or opinions from Mr. Date under Fed. R. Civ. P. 37.

BACKGROUND

On July 2, 2001, Opposers filed their Notice of Opposition alleging that the Super Bezel mark is functional. Opposers allege that the distinctive features of Auto Meter's Super Bezel mark are necessary to protect and to hold the cover glass of a high performance gauge or tachometer to the instrument, and to prevent glare from occurring on the face of the cover. Discovery closed on June 7, 2002. Opposers and Auto Meter have completed their respective cases in chief, and Opposers' rebuttal trial testimony period opened on March 6, 2003.

On February 28, 2002, Auto Meter served its interrogatory requesting the identity of all experts that Opposers intended to rely upon in this case pursuant to Fed.R.Civ.P. 33 and TBMP §419(7). (See Exhibit 3, Int. No. 25). Opposers initially refused to answer Auto Meter's interrogatory and rebuffed Auto Meter's attempt to resolve the dispute through negotiation. (See Exhibit 4). On June 7, 2002, the last day of discovery, Opposers finally relented and answered the interrogatory by disclosing a *single* witness, Mr. Yorham Wind, a purported *survey* expert. (See Exhibit No. 9). Acknowledging their disclosure obligations, Opposers also provided Mr. Wind's expert report, and produced him for his deposition. (See Exhibit 3). Opposers' survey

expert only critiqued the procedures used by Auto Meter's the survey expert, Mr. John Bunge, whose surveys conclusively showed the strong secondary meaning established in the Super Bezel mark. Opposers, did *not* disclose or even suggest that they would call *any* additional expert witnesses.

On May 3, 2002, Auto Meter further took the Rule 30(b)(6) Deposition of Opposers' Brand Marketing Manager, Michael Sheridan, who was designated as Opposers' corporate representative to testify on "[a]ll facts, evidence and allegation supporting Opposers' allegation that the Super Bezel is merely functional and does not serve as a trademark." (See Exhibit 5, topic 7, Exhibit No. 6, pp. 10-11). Mr. Sheridan also was Opposers' *only* witness during their case in chief during the trial phase of this case.

In Mr. Sheridan's discovery deposition, Opposers revealed that their functionality allegations were not based on *any* engineering studies, technical or expert opinions, but were based only on Mr. Sheridan's subjective assumptions and opinions. For example, Mr. Sheridan testified as follows:

Q. Have you done any engineering studies to determine whether the Super Bezel is better or worse in protecting against glare as other bezel designs?

A. No, just from a practical standpoint.

Q. Do you have any background from a scientific or practical standpoint that would allow you to say that the Super Bezel is better at preventing glare than other bezel designs.

A. No.

Q. So as far as the glare protection aspect, that is one assumption on your part, that it is better at protecting glare than other bezel designs?

A. Practical assumption.

(Exhibit 6, pp. 104-105)

* * * * *

Q. Do you have any scientific evidence or studies to show that it is better or worse?

A. No, I do not.

(Exhibit 6, pp. 118, lines 10-12)

* * * * *

Q. I don't want to testify. But my question is you have done no studies?

A. No, I have not.

Q. You haven't studied them in a car, actually mounted in a car to determine whether in fact they're blocking glare?

A. No.

Q. Now, as far as the ability to prevent damage to the glass, have you done any studies, or is there any evidence that Old World or Splitfire has available to them that the bezel they use or any of these bezels, actually, protect their covers from damage?

A. No.

(Exhibit 6, pp. 118-119, lines 21-24, lines 1-10)

* * * * *

Q. Now, as far as the ability to prevent damage to the glass, have you done any studies, or is there any evidence that Old World or Splitfire has available to them that the bezel they use or any of these bezels, actually protect their covers from damage?

A. No.

* * * * *

Q. So would it be fair to say that Old World and Splitfire have no evidence that in fact any of these bezels really do protect against damage when they are in use?

A. Correct.²

(Exhibit 6, pp. 118-119.)

Opposers, were given ample opportunity to discover the bases for Auto Meter's denial of their "functionality" claims. Opposers deposed Auto Meter's former President, Mr. John Westberg on the design, development and alleged function of the Super Bezel mark. Mr. Westberg is a mechanical engineer and the creator of the Super Bezel. He also designed and developed Auto Meter's high performance automotive gauges, meters and other instruments for over 30 years.³

Mr. Westberg, in fact, was cross examined on the issue of functionality, and he summarized the technical, engineering and scientific reasons establishing that the Super Bezel is *not* functional, *does not* protect against glare and does not prevent damage to the cover glass. (Exhibit 8, pp. 83-88). He compared Auto Meter's Super Bezel with industry standard bezels specified by the Society of Automotive Engineers, and briefly explained the physics of light

² Mr. Sheridan's testimony during Opposers's case in chief did not materially differ from his discovery deposition testimony.

³ In its interrogatory answers, Auto Meter identified Mr. Westberg as a "percipient witness", knowledgeable on development and use of the Super Bezel and knowledgeable on the issues of the case, which of course, included Auto Meter's denial of Opposers's functionality allegations. (See Exhibit 7, Resp. 3, 4, 18 and 19). Opposers, however, did not propound an interrogatory directed to the issue of functionality or the bases of Auto Meter's denials. Mr. Westberg also submitted declarations and arguments in support of Auto Meter's application establishing that the Super Bezel is not functional during the prosecution of the application.

reflection to gauges and tachometers. (See Exhibit 8, pp. 85-88). Opposers did not follow up with further questioning of Mr. Westberg on those or other functionality issues.⁴

Thus, well before the close of discovery in June 2002, Opposers were fully on notice of (1) the deficiencies of their functionality evidence, (2) Auto Meter's technical and scientific rebuttal to Opposers functionality claims, and (3) Mr. Westberg's expected trial testimony on that issue. Opponents, therefore, had ample opportunity to locate a technical expert to allegedly support their allegations, to identify him before the close of discovery, and to proffer his expert technical opinions and/or evidence in their case in chief. That Opposers elected not to do so was a deliberate decision that cannot be reversed at this stage in the trial of this action.

ARGUMENT

The Board's longstanding rules and authorities prohibit Opposers attempt to proffer the undisclosed expert, Mr. Date, and his improper rebuttal testimony. That Opposers failed to disclose his identity during discovery is sufficient alone to bar Mr. Date. See Fed. R. Civ. P. 37. Moreover, Opposers's broad description of his expected testimony unequivocally establishes that this testimony could only properly be introduced during Opposers' case in chief.

A. Opposers Failure To Disclose Mr. Date Requires That He Be Stricken

Opposers were expressly required under Fed.R.Civ.P. 33 and The Trademark Trial and Appeal Board Rules to identify their new expert during discovery, and certainly well in advance

⁴ Mr. Westberg's trial testimony was very similar to his deposition testimony, with an explanation and demonstration of, the engineering and physics principles discussed in his discovery deposition.

of their opening trial period. Under TBMP §419(7), a party must disclose at least the identity of its experts, and TBMP §412.03 and Fed.R.Civ.P. 26(e) required the timely supplementation of that response through other discovery (*i.e.* depositions) or written notice. Absent this rule, it is impossible (as it is here) for an applicant to prepare for an opposers' expert trial testimony.

As mentioned above, Auto Meter served the required interrogatory, and Opposers eventually acknowledged their duty to respond by identifying only their survey expert. Opposers cite no rule of Federal Civil Procedure or the Board (because there is none) permitting them to object to identifying other experts (as "work product or otherwise) for the first time nine business days before the start of their rebuttal period. *See e.g. American Cyanamid Co. v. Microsurge, Inc.*, 1997 TTAB LEXIS 128, p. 3 (TTAB 1997) (party cannot object to discovery requests and then offer evidence on the subject of those requests at trial).

Opposers have had over one and a half years after filing their Notice of Opposition to locate a technical expert to support their functionality allegations. Furthermore, as discussed *supra*, Opposers were on notice that they required such an expert to have any hope of supporting their claim. That Opposers realized during Auto Meter's case in chief that they needed an expert is no excuse for sandbagging Auto Meter with their undisclosed expert.

The prejudice to Auto Meter is manifest. Auto Meter cannot now prepare to cross examine an entirely new witness. Moreover, after asserting during discovery and during their case in chief that they relied only on Mr. Sheridan's unsupported assumptions and opinions. Opposers would deny Auto Meter an opportunity to counter Opposers's new expert's testimony, as Auto Meter is not permitted surrebuttal. Therefore, a protective order striking Opposers'

Notice of Testimony and excluding the new experts testimony is required to prevent undue prejudice to Auto Meter and in the interests of fairness and due process. *See Fed. R. Civ. P. 37.*

B. Opposers' New Expert Further Is An Improper Rebuttal Witness

By alleging in their Notice of Opposition that the Super Bezel mark was functional, Opposers were required to come forward with *all* of their testimony and evidence allegedly supporting their allegations *in their case in chief*. This is long established black letter law before the Board. *See e.g. Ritz Hotel Ltd v. Ritz Closet Seat Corp.*, 17 USPQ 2d 1466, 1469 (TTAB 1990)(rebuttal expert testimony stricken); *Hoyle Knitting Mills, Inc. v. T. J. Magnolia, Inc.*, 12 USPQ 2d 1720, 1726 (TTAB 1989); *Logic on, Inc. v. Logistic on, Inc.* 205 USPQ 767, 768 n.7 (TTAB 1980); *General Electric Co. v. Graham Magnetics, Inc.* 197 USPQ 690, 692, n. 5 (TTAB 1977).⁵

In their case in chief, Opposers offered a single witness, Mr. Sheridan, to testify on all of the issues alleged in its Notice Of Opposition, including their speculative and unsupported functionality allegations. In Auto Meter's case in chief, Mr. Westberg, established a compelling rebuttal record that the Super Bezel was *non-functional* in accordance with his deposition testimony and assisted with demonstrative evidence and other proper record evidence.

Opposers's new expert plainly is not proffered to any deny or discredit any *facts* that were the subject of Auto Meter's case in chief, or to explain Mr. Sheridan's testimony from Opposers' case in chief. Indeed, Opposers do not even suggest that their new expert is

⁵ *See also Yamaha Intern. v. Hoshino Gakki*, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988); *Dans un Jardin v. Le Jardin Des Plantes*, 226 USPQ 956, 957 n.4 (TTAB 1985); *Pekor Iron Works, Inc. v. Pennsylvania Engineering Corp.*, 181 USPQ 660, 663 (TTAB 1974); *Leon Products, Inc. v. Associated Products, Inc.*, 177 USPQ 94, 95 n. 3 (TTAB 1973).

personally knowledgeable about *any* of the facts in this case. Certainly, any purported explanation of Mr. Sheridan's testimony by an expert would be inadmissible and incompetent. Fed.R.Evid. 602 and 802.

Opposers' letter accompanying this Notice of Testimony leaves no question that he is proffered solely to offer opinions to shore up Opposers' woefully inadequate functionality allegations. The TTAB in *General Electric*, 197 USPQ at 692, n. 5, however, explained that this is improper in rebuttal and simply not permitted (emphasis added):

Evidence which should constitute part of Opposer's case in chief but which is made of record during the rebuttal testimony period is *not* considered if applicant objects. See *Leon Products, Inc. v. Associated Products, Inc.*, 177 USPQ 94 (TT&A Bd. 1973). *Applicant is entitled to an opportunity to rebut, during its testimony period, any testimony and evidence proffered in support of the allegations in the notice of opposition. This opportunity is foreclosed if opposer withholds the evidence until its rebuttal testimony period, which is intended to be limited to denials, refutations or explanations of applicant's testimony and evidence.*

The Board does not permit the use of rebuttal to "bolster opposer's testimony-in-chief or close the holes therein." *Pekor*, 181 USPQ at 663; see also *Leon Products, Inc. v. Associated Products, Inc.*, 177 USPQ at 95 n. 3 (alleged rebuttal evidence which should have been presented in opposer's case in chief stricken). This rule was established for the due process requirements of an opposition trial. Otherwise, an opposer would have every incentive to sandbag an applicant (as Opposers have done here), by introducing clearly inadequate evidence in its opening case, and withholding necessary expert and other testimony until rebuttal where it could not be answered by the applicant.⁶

⁶ Under the Board's Rules, Auto Meter could not move for a judgment as a matter of law at the close of Opposer's case in chief to keep these Opposers honest in this respect. TBMP §§502.01 and 535.04.

Opposers further can offer no legitimate reason for failing to present the opinions and of their new expert during their case in chief in view of Auto Meter's denial of their functionality allegations, the cross examination of Mr. Sheridan during discovery revealing the lack of any technical or scientific bases for Opposers' functionality allegations, and Mr. Westberg's discovery testimony on the technical and scientific bases for Auto Meter's denial of Opposers' allegations. Indeed, as mentioned above, given over a year to prepare for its case in chief, Opposers can assert proper purpose for springing an entirely new expert witnesses in rebuttal on an issue for which they were required to establish a *prima facie* case in their opening testimony period. *Yamaha Intern. v. Hoshino Gakki*, 6 USPQ 2d 1001, 1004 (Fed. Cir. 1988).

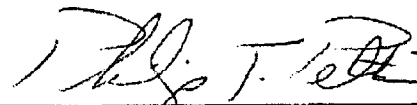
CONCLUSION

Auto Meter respectfully requests that its motion to quash the Notice of Testimony Deposition of Ram Date be granted and that a Protective Order excluding all testimony or other evidence from Mr. Date be entered under Fed.R.Civ.P. 37 and TBMP §521.

Respectfully submitted,

Dated: March 7, 2003

AUTO METER PRODUCTS, INC.



Philip T. Petti
Sandra V. Scavo

Fitch, Even, Tabin & Flannery
120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
312-577-7000
Attorneys for Applicant

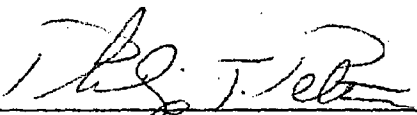
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO STRIKE NOTICE OF TESTIMONY DEPOSITION OF RAM DATE AND FOR ENTRY OF PROTECTIVE ORDER was caused to be served on counsel for Opposers in the manner set forth below and addressed to:

Via Facsimile and First Class Mail

Sanjiv D. Sarwate
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson
311 South Wacker Drive
Suite 5000
Chicago, IL 60606

this 7th day of March 2003.


An Attorney for Applicant

**PUBLISHED DRAWING PAGE OF AUTO METER
APPLICATION OF THE SUPER BEZEL**

EXHIBIT 1

Sub. No. 8

75/457081

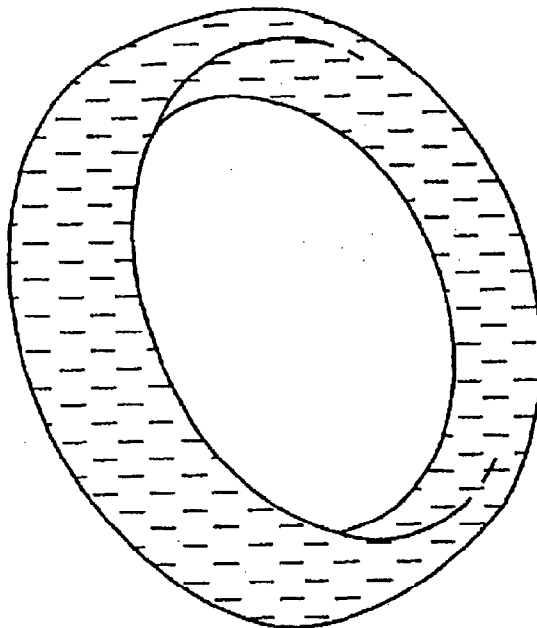
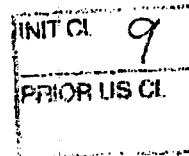
APPLICANT: Auto Meter Products Inc.

ADDRESS: 413 W. Elm Street
Sycamore, IL 60178

FIRST USE: At least as early as 1968

FIRST USE INTERSTATE
COMMERCE: At least as early as 1968

GOODS: Automotive measuring instruments, namely oil pressure,
water temperature, vacuum, ammeter, volt meter, fuel
pressure, fuel level and oil temperature gauges, hourmeters,
speedometers and tachometers for the automotive
aftermarket



ATTORNEYS: J. Paul Williamson
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HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057
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**FEBRUARY 25, 2003 LETTER
FROM OPPOSERS' ATTORNEY and
NOTICE OF TESTIMONY DEPOSITION OF RAM DATE
to commence March 14, 2003**

EXHIBIT 2

PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD & GERALDSON

ATTORNEYS AT LAW

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ALEXANDRIA, VA OFFICE
SUITE 550
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ALEXANDRIA, VIRGINIA 22314
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FACSIMILE
ALEXANDRIA (703) 684-7888

February 25, 2003

VIA FACSIMILE

Philip T. Petti, Esq.
Fitch, Even, Tabin & Flannery
120 South La Salle Street
Suite 1600
Chicago, Illinois 60603

Re: Old World Industries, Inc. and SplitFire International, Inc. v.
Auto Meter Products, Inc.

Dear Phil:

This letter is to advise you that opposers intend to take the testimony deposition of Ram Date, as set forth in the attached deposition notice. In the interests of saving time, Mr. Date's résumé is attached. We anticipate that Mr. Date will testify concerning functionality.

Sincerely yours,


Sanjiv D. Sarwate

SS/pac

Ram Date
20867 Veranda Dr
Novi, MI 48375
(248) 348-7675
pgdate@yahoo.com

BACKGROUND SUMMARY

Extensive and diverse experience in all phases of automotive systems and components design. Demonstrated expertise in product design from inception through product launch. Proven strengths in detailed design, analysis and customer interface. Excellent interpersonal and team building skills.

PROFESSIONAL EXPERIENCE

Visteon Corporation/Ford Motor Company, Dearborn, MI

1976-2001

Engineering Supervisor

1990-2001

Responsible for Technical and Financial Success of Design Projects. Supervised one engineering design section, developed advanced instrumentation concepts and led a support team to transfer production of some components to a new joint venture (JV) in China.

- Led a team that designed and launched the instrument cluster for 1996 Taurus carline.
- Supervised a team to transfer clocks, lamp outage modules, radio amplifiers, instrument clusters and radios to a joint venture company in China.
- Designed a cluster for a South American customer (AutoLatina) and simultaneously transferred design technology to our Brazil team.
- Developed advanced instrumentation concepts. The LED pointer is currently in production on the Lincoln Continental Instrument cluster.
- Developed a scheme of gear combinations such that one standard odometer design can be used for different inputs (6000 Revs per mile Vs. 5000 Revs per km) and different displays (miles Vs. km).

Product Design Engineer

1984-1990

Designed and Developed instrumentation products for outside customers (Mazda and Nissan).

- Interfaced with Component Suppliers and Customers.
- Wrote an Assembly Language program for the Vehicle Maintenance Monitor for the 1989 Thunderbird for monitoring the Engine Oil Condition.
- Developed a successful quote and designed the first automotive component supplied to a non-Ford customer (MAZDA). The cluster was delivered on time and met Japanese quality levels.
- Effectively utilized Ford warranty system to analyze data and pinpoint warranty problems to achieve yearly cost reduction and quality improvement goals.
- Successfully packaged Instrument clusters in the Instrument Panel (IP) for the Villager and the Quest minivans.
- Fully experienced in all aspects of WERS system.

Ram Date
Page Two

Computer Applications Engineer

1979-1984

Developed in-house computer programs for specialized engineering Applications.

- Developed a CAD program for laying out smooth traces for printed wiring boards.
- Wrote a program to automatically test the radio performance using Hewlett Packard test equipment.
- Wrote database applications for tracking program timing and for component failure analysis.
- Developed an EXCEL macro to track design projects for timely design reviews.

Product Design Engineer

1976-1979

Design Instrument Clusters and Clocks for Automotive applications.

- Performed application engineering for mechanical clock movements, drum digital clocks, quartz analog clocks and electronic digital clocks.
- Wrote standards and implemented adherence to those standards for flexible circuit designs.
- Performed lighting development, mechanical packaging, tolerance stack-up analysis, design verification (DV) testing and Failure Mode and Effects Analysis (FMEA) for instrument cluster designs.

EDUCATION

M.B.A., Finance and Computer Programming, University of Detroit	1979
M.S., Mechanical Engineering, Kansas State University	1969
B.S., Mechanical Engineering, Marathwada University, Aurangabad, India,	1964

ADDITIONAL SKILLS and COURSES

Programming Knowledge and Experience in FORTRAN, BASIC, C++, COBOL and Assembly Language. Expert in EXCEL, Familiar with PRO/E Solid Modeling and AUTOCAD.

- | | |
|--|--|
| - Design for Assembly | - Dale Carnegie Course |
| - Taguchi Methods | - Facilitation Skills |
| - Statistical Process Controls | - Electronics for Mechanical Engineers |
| - Quality Function Deployment | - Finite Element Analysis Awareness |
| - Plastic Part Design | - Robotics Overview |
| - Applied Geometric Dimensioning & Tolerancing | |

Technical Affiliations

Member of American Society of Mechanical Engineers
Member of Society of Automotive Engineers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 75/457,081: MISCELLANEOUS DESIGN
(Bezel)

Published in the Official Gazette of June 5, 2001 in International Class 9

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and)

SPLITFIRE INTERNATIONAL, INC.)

Opposers)

v.)

AUTO METER PRODUCTS, INC.,)

Applicant.)

Opposition No. 150,094

To: Philip T. Petti
Sandra V. Scavo
Fitch, Even, Tabin & Flannery
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406

NOTICE OF TESTIMONY DEPOSITION

PLEASE TAKE NOTICE that opposers, Old World Industries, Inc. and SplitFire International, Inc., will take the testimony deposition upon oral examination of Ram Date, commencing on Friday, March 14, 2003 at 10:00 a.m. at Esquire Deposition Services, One North Main Building, 101 North Main Street, Suite 420, Ann Arbor, Michigan 48104. The deposition will take place before a qualified court reporter who is authorized to administer oaths.

You are invited to attend and cross-examine.

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON

By: 

David C. Hilliard
Sanjiv D. Sarwate
311 South Wacker Drive, Suite 5000
Chicago, Illinois 60606
(312) 554-8000
(312) 554-8015 (facsimile)

Attorneys for Opposers

Of counsel:

Daniel M. Leep, Esq.
Old World Industries, Inc.
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Northbrook, Illinois 60062
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**OPPOSER'S ANSWERS TO APPLICANT'S
FIRST SET OF INTERROGATORIES
(pages 1, 11 & 15 only)**

EXHIBIT 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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AUTO METER PRODUCTS, INC.,)	
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Applicant.)	

OPPOSER'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposers Old World Industries, Inc. and Splitfire International, Inc. ("opposers"), answer and object to applicant's first set of interrogatories as follows:

General Objections

1. Opposers object to applicant's interrogatories, including the instructions and definitions, to the extent they seek information that is protected by the attorney-client privilege or work product doctrine.
2. Opposers object to applicant's interrogatories, including the instructions and definitions, to the extent they seek information that is irrelevant and not calculated to lead to the discovery of admissible evidence.
3. Opposers object to applicant's interrogatories, including the instructions and definitions, to the extent they impose an undue burden or obligations beyond those set forth in the Trademark Trial and Appeal Board Manual of Procedure or the Federal Rules of Civil Procedure.
4. Opposers object to applicant's interrogatories, including the instructions and definitions, to the extent they seek production of information or documents containing confidential business information, which will not be disclosed until entry of an appropriate protective order.

- Sunpro
- Greddy

Interrogatory No. 24

Identify all parties who manufacture or produce automotive gauges, meters and/or tachometers that include the bezels for Splitfire, including those manufacturers outside the United States.

ANSWER

Opposer object to this interrogatory because it is unduly burdensome and seeks confidential business information that will not be produced prior to entry of an appropriate protective order.

Interrogatory No. 25

Identify all experts which have at any time been retained by Splitfire for this Opposition, including their opinions and supporting bases and all documents and information considered by the experts.

ANSWER

Opposers object to this interrogatory to the extent it seeks information about consulting experts, whose identity is protected by the work product doctrine. Subject to and without waiving this objection, opposers have not made any determination as to whether they will rely on the testimony of an expert in this proceeding, and reserve the right to supplement this answer as appropriate.

Interrogatory No. 26

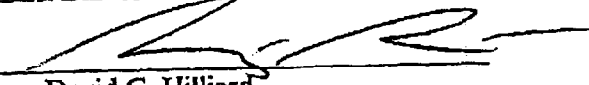
Identify all surveys and proposed surveys concerning automotive gauges, meters and tachometers conducted at the request of Splitfire, including but not limited to surveys involving the Super Bezel mark.

ANSWER

None at this time.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON

By


David C. Hilliard
Sanjiv D. Sarwate
311 South Wacker Drive
Suite 5000
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Opposers Splitfire
International, Inc. and Old World
Industries, Inc.

VERIFICATION

I, Mike Sheridan, state that:

- 1) I am an officer of Old World Industries, Inc. and Splitfire International, Inc., and as such, am authorized to make this verification;
- 2) That I have read Opposers' Answers to Applicant's First Set of Interrogatories and know the contents thereof; and
- 3) Opposers' Answers to Applicant's First Set of Interrogatories are true to the best of my knowledge or upon my information and belief.

This 31st day of January, 2002.


Mike Sheridan

MAY 29, 2002 LETTER FROM APPLICANT
TO OPPOSERS' ATTORNEYS

MAY 31, 2002 LETTER FROM OPPOSERS
TO APPLICANT'S ATTORNEYS

EXHIBIT 4

FITCH, EVEN, TABIN & FLANNERY

ATTORNEYS AND COUNSELORS AT LAW

Established in 1859

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May 29, 2002

Via Facsimile and Hand Delivery

Sanjiv D. Sarwate, Esq.
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson
311 South Wacker Drive, Suite 5000
Chicago, IL 60606

Re: *Old World Industries, Inc. and Splitfire International, Inc.*
v. Auto Meter Products, Inc.
Opposition No. 150,094
Our File No.: 7222-69477

Dear Sanjiv:

Following up on our telephone discussion this morning, we have reached an agreement on the following discovery issues:

1. Old World/Splitfire will agree to the standard TTAB protective order. An "original" of the Protective Order that I sent to you on May 16, 2002 is enclosed with the confirmation copy of this letter. Please return it and we will file it with the TTAB.
2. All documents will be produced and written discovery responses supplemented by the current close of discovery, June 7, 2002.
3. The parties will agree to a deposition schedule that will conclude all depositions by June 30, 2002. You suggested that Old World/Splitfire produce its witnesses during the week of June 17 to June 21, 2002 and that Auto Meter produce its witnesses during the week of

Sanjiv D. Sarwate, Esq.
May 29, 2002
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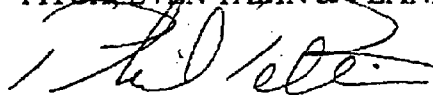
June 24 through June 28, 2002. We will have to discuss this proposed schedule with our client and expert.

4. The parties also will identify the witnesses to be deposed and a schedule for each witness by the current close of discovery on June 7, 2002. Auto Meter reserves the right to take follow-up depositions, if necessary, in view of the limited persons identified by Old World/Splitfire (2 people) with knowledge concerning their claims.
5. By Friday, May 31, 2002 you will inform us whether Old World/Splitfire will identify an expert witness. In the event Old World/Splitfire identifies an expert, you have asked for additional time after the June 7, 2002 discovery cut-off to permit the expert to prepare and serve an expert report. You asked for two additional weeks, or until June 21, 2002. We agreed to discuss the extension with our client, once we learn whether Old World/Split Fire intends to identify such an expert.

The underlying documents referenced in the report by Auto Meter's expert, John Bunge, are being prepared for production and are available for pick up by your copy service, pursuant to our previous correspondence. Per your request, we are also enclosing with the confirmation of this letter a color copy of the survey exhibits.

Very truly yours,

FITCH, EVEN TABIN & FLANNERY



Phillip T. Petti

PTP/blm

cc: Chuck Nalls, Esq.

PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD & GERALDSON

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CONFIRMATION

May 31, 2002

VIA FACSIMILE (312) 577-7007

Philip T. Petti, Esq.
Fitch, Even, Tabin & Flannery
120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406

**Re: Old World Industries, Inc. and SplitFire International, Inc. v.
Auto Meter Products, Inc.
Opposition No. 150,094
Your File No. 7222-69477
Our File No. 00971-00002**

RECEIVED
FITCH, EVEN, TABIN
JUN - 5 2002

Dear Phil:

I have received your letter of May 29, 2002. Enclosed is a signed copy of the protective order. I understand that you will sign it and file it with the Board.

I have spoken with my client and confirmed that we will be presenting Mike Sheridan as the witness under Rule 30(b)(6) for all topics identified in Auto Meter's notices of deposition. I have also confirmed that Mr. Sheridan is available on June 17, 2002 for deposition. I understand that you are confirming your witnesses' availability during the week of June 24, 2002.

With respect to identifying an expert witness, we note that we only received the raw data supporting the survey late on the afternoon of Thursday, May 30, 2002. Reviewing and making a determination as to whether we will call an expert witness by Friday, May 31, will therefore be impossible. Furthermore, the Trademark Rules of Practice do not require production of an expert report or that an expert witness be retained or disclosed during the discovery period in order to be permitted to testify. 37 CFR §2.120(a); *White Consolidated Indus., Inc. v. Royal Appliance Mfg.*

Philip T. Petti, Esq.


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May 31, 2002

Co., 2000 TTAB LEXIS 363 (TTAB 2000); *Touch Tel Corporation v. AirTouch Communications*, 1999 TTAB LEXIS 313 (TTAB 1999).

We agree that the parties will produce all non-privileged and otherwise non-objectionable responsive documents in their possession and supplement written discovery responses to the extent necessary by June 7, 2002. Old World and SplitFire specifically reserve the right to conduct discovery of third parties after June 7, and to supplement any answers to written discovery after June 7 if required by Rule 26(e).

Sincerely yours,


Sanjiv D. Sarwate

SS/tcp

APPLICANT'S FIRST NOTICE OF DEPOSITION
OF OLD WORLD INDUSTRIES, INC.
PURSUANT TO RULE 30(b)(6)

EXHIBIT 5

Attorney Docket No. 7222-69477

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 75/457,081: MISCELLANEOUS DESIGN
(Super Bezel)

Published in the Official Gazette of June 5, 2001 in International Class 9

OLD WORLD INDUSTRIES, INC.,)	
)	
and)	
)	
SPLITFIRE INTERNATIONAL, INC.)	
)	Opposition No. 150,094
Opposers)	
)	
AUTO METER PRODUCTS, INC.,)	MAY 2 8 2002
)	
Applicant.)	

**APPLICANT'S FIRST NOTICE OF DEPOSITION OF
OLD WORLD INDUSTRIES, INC. PURSUANT TO RULE 30(b)(6)**

To: Sanjiv D. Sarwate
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson
311 South Wacker Drive
Suite 5000
Chicago, IL 60606

PLEASE TAKE NOTE that, commencing at 10:00 a.m. on May 20, 2002 and continuing until completed, at the offices of Fitch, Even, Tabin & Flannery, 120 South LaSalle Street, Suite 1600, Chicago, IL 60603, or at such other place and time as may be mutually agreeable, applicant, Auto Meter Products, Inc. ("Auto Meter") will take the deposition of Opposer, Old World Industries Inc. ("Opposer"), in accordance with Rule 30(b)(6), Fed.R.Civ.P., concerning the subject matters set forth in the attached Schedule A.

Opposer is requested to designate in writing at least three (3) days before the start of the deposition, one or more employees, officers, agents or other persons who consent to testify on its behalf, and to identify for each such person the matters set forth in Schedule A on which that person will testify; and to cause each witness to inform himself on each identified matter as to what information is known or reasonably available to Opposer to the extent provided for in Rule 30(b)(6), Fed.R.Civ.P. In addition, each designated person will be examined as to their personal knowledge regarding information relevant to this action.

The deposition will take place upon oral examination before a notary public or other officer authorized by law to administer oaths and will continue from day to day until completed, with such adjournments as to time and place as may be necessary. The deposition will be recorded by sound and video means.

Dated: May 3, 2002

AUTO METER PRODUCTS, INC.

By: 

Philip T. Petti
Sandra V. Scavo

Fitch, Even, Tabin & Flannery
120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
312-577-7000
Attorneys for Applicant

281149

SCHEDULE A

Opposer shall designate one or more officers, directors, managing agents or other persons to testify in its behalf as to the following matters known or reasonably available to Opposer:

1. All of the automobile accessories and gauges having a bezel to hold a protect the cover of the gauges manufactured by Opposer.
2. All of the automobile gauges Opposer intends to manufacture, market and sell in commerce having a bezel to hold and protect the cover of the gauge.
3. All of the gauges Opposer sells in competition with Auto Meter's gauges.
4. All of the gauges sold by Opposer and others that include the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel).
5. Any information related to the facts, evidence and contention that Auto Meter's use of the Super Bezel has not been substantially exclusive and does not indicate that Auto Meter is the source of the gauges.
6. All facts, evidence and allegations supporting Opposer's allegation that the Super Bezel serves as ornamentation for a gauge.
7. All facts, evidence and allegations supporting Opposer's allegation that the Super Bezel is merely functional and does not serve as a trademark.
8. All facts evidence and allegations supporting Opposer's allegation that the Super Bezel is not entitled to registration as a trademark.
9. All facts, evidence and contentions supporting Opposer's allegation that it will be injured by the registration on the Principle Register of Auto Meter's SUPER BEZEL mark.
10. Identity of, and all facts, evidence and contentions supporting any other allegation of Opposer that Auto Meter should not be permitted to register it's Super Bezel mark on the Principle Register.
11. All facts and evidence concerning the design and development of Opposer's bezel(s) used on Opposer's meter and gauge products, including without limitation the bezel identified by Opposer that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel mark).
12. Opposer's first knowledge of Auto Meter's Super Bezel mark and Auto Meter's products using Auto Meter's Super Bezel mark.
13. Opposer's advertising, promotion, offers to sell and sell of meter and/or gauge products with a bezel(s), including without limitation the bezel identified by Opposer that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning

(i.e. the Super Bezel mark) and specifically Opposer's first use, advertising, promotion, offer to sell and/or sell of products with bezels in an interstate commerce, as well as, an intrastate commerce.

14. The persons responsible for and involved in designing Opposer's bezel designs that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel mark).
15. The channels of distribution and sell of Opposer's meter and gauge products with a bezel that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel mark).
16. The source, designer and/or manufacturer of Opposer's meter and gauge products with a bezel that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel mark).
17. The sales and margins of Opposer's meter and gauge products with a bezel that includes the bezel for which Auto Meter is seeking registration and claiming secondary meaning (i.e. the Super Bezel mark).
18. The officers, directors, managers and managerial structure of Opposer.
19. The relationship between Old World Industries, Inc. and Splitfire International, Inc.

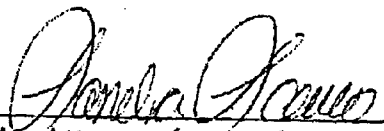
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Applicant's Notice of Deposition of
OLD WORLD INDUSTRIES, INC. PURSUANT TO RULE 30(b)(6) was caused to be served
on counsel for Opposers in the manner set forth below and addressed to:

Via Hand Delivery

Sanjiv D. Sarwate
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson
311 South Wacker Drive
Suite 5000
Chicago, IL 60606

this 3rd day of May, 2002.


An Attorney for Applicant

**JUNE 17, 2002 DEPOSITION TRANSCRIPT
OF MICHAEL SHERIDAN
(pages 9-12, 104, 105 & 118-119 only)**

EXHIBIT 6

BSA

OLD WORLD-SPLITFIRE AND AUTO METER MICHAEL SHERIDAN 6/17/2002

XMAX(1)

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(1) IN THE UNITED STATES PATENT
(2) AND TRADEMARK OFFICE
(3) BEFORE THE TRADEMARK TRIAL
(4) AND APPEAL BOARD
(5) In the Matter of Application Serial
(6) No. 75/487,081: MISCELLANEOUS DESIGN
(7) (Super Bezel)
(8) Published in the Official Gazette of
(9) June 5, 2001 in International Class 9
(10) OLD WORLD INDUSTRIES,)
(11) INC.,)
(12) and)
(13) SPLITFIRE INTERNATIONAL,)
(14) INC.,)
(15)) Opposition No. 150,064
(16) Opposers)
(17))
(18) AUTO METER PRODUCTS,)
(19) INC.,)
(20))
(21) Applicant.)
(22)
(23) The deposition of MICHAEL SHERIDAN,
(24) called for examination, pursuant to the
(25) provisions of the Federal Rules of Civil
(26) Procedure, pertaining to the taking of
(27) depositions, taken before Jesse A. Longoria,
(28) C.S.R. for the State of Illinois, at 317 South
(29) Wacker Drive, Suite 5000, Chicago, Illinois, on
(30) June 17, 2002, commencing at 9:00 o'clock a.m.
(31)

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(1) APPEARANCES:
(2)
(3) PATTISHALL, McLAULIFFE, NEWBURY,
(4) MILLIARD & GERALDSON, by
(5) MR. SANJIV D. SARWATE
(6) 317 South Wacker Drive
(7) Suite 5000
(8) Chicago, Illinois 60606
(9) appeared on behalf of the
(10) Opposers:
(11) FITCH, EVEN, TABIN & FLANNERY, by
(12) MR. PHILIP T. PETTI
(13) MS. SANDRA V. SCAVO
(14) 120 South LaSalle Street
(15) Suite 1600
(16) Chicago, Illinois 60603-3408
(17) appeared on behalf of the
(18) Applicant.
(19)
(20) Also Presents:
(21) Mr. Daniel M. Leep
(22) Senior Vice President and
(23) General Counsel, Old World
(24) Industries, Inc.
(25)
(26)
(27)
(28)
(29)
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(31)
(32)
(33)
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BSA

OLD WORLD-SPLITFIRE AND AUTO METER MICHAEL SHERIDAN 6/17/2002

XMAXC01

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- (1) to answer any pending question. But we will
- (2) try to be reasonable in allowing breaks and
- (3) interruptions as necessary. Do you understand
- (4) that?
- (5) A. Yes.
- (6) Q. All right. Now, I also need to have
- (7) you make sure that you give an audible answer.
- (8) A. Yes.
- (9) Q. In other words, a spoken answer, nods
- (10) of the head, shrugs of the shoulders are
- (11) difficult for the court reporter to pick up
- (12) accurately.
- (13) A. Yes.
- (14) Q. All right. Do you understand that you
- (15) have been designated by Old World and SplitFire
- (16) to testify on their behalf?
- (17) A. Yes.
- (18) MR. PETTI: And I will mark as Auto
- (19) Meter's Deposition Exhibit AM-1, the
- (20) Applicant's First Notice of Deposition of
- (21) SplitFire International pursuant to rule
- (22) 30(b)(6).
- (23) As AM-2 Auto Meter's Second Notice of
- (24) Deposition of SplitFire International pursuant

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- (1) to rule 30(b)(6).
- (2) As AM-3 Applicant's Second Notice of
- (3) Deposition - let me strike that. As Auto
- (4) Meter 3 Applicant's First Notice of Deposition
- (5) to Old World Industries pursuant to rule
- (6) 30(b)(6).
- (7) And as Auto Meter Exhibit AM-4
- (8) Applicant's Second Notice of Deposition of Old
- (9) World Industries pursuant to rule 30(b)(6).
- (10) (Marked Auto Meter Exhibits
- (11) No. AM-1, AM-2, AM-3 and AM-4.)
- (12) BY MR. PETTI:
- (13) Q. Have you seen these notices of
- (14) deposition before?
- (15) A. Yes.
- (16) Q. And attached to each of these notices
- (17) is a schedule of topics. Are you aware of
- (18) that?
- (19) A. Yes.
- (20) Q. Now, turning first to Auto Meter's
- (21) Exhibit AM-1, which is the first notice of
- (22) deposition to SplitFire, and Schedule A of that
- (23) notice, are you prepared to testify in each of
- (24) the topics in Schedule A?

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- (1) A. Yes.
- (2) Q. Are there any topics that you are not
- (3) prepared to testify about?
- (4) A. Not at this point.
- (5) Q. And do you understand that in
- (6) testifying on behalf of SplitFire and Old World
- (7) as a Rule 30(b)(6) witness you are to testify
- (8) based on your personal knowledge, all knowledge
- (9) reasonably available to both companies, is that
- (10) correct?
- (11) A. Yes.
- (12) Q. Now, if you would turn to a AM-2,
- (13) which is the Second Notice of Deposition, and I
- (14) ask you if you would turn to Schedule A. Are
- (15) you prepared to testify to each of those
- (16) topics?
- (17) A. Yes.
- (18) Q. Are there any topics you feel that you
- (19) aren't prepared to testify on?
- (20) A. Not at this point.
- (21) Q. If you would turn to AM-3, this is the
- (22) First Notice of Deposition of Old World. Are
- (23) there any topics, are you prepared to testify
- (24) on each of these topics?

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- (1) A. Yes.
- (2) Q. Are there any topics that you feel you
- (3) are not prepared to testify on?
- (4) A. Not at this point.
- (5) Q. And I will ask you to turn to AM-4,
- (6) which is the second notice of deposition to Old
- (7) World Industries. Are there any topics in this
- (8) notice that you feel you are not prepared to
- (9) testify on?
- (10) A. No.
- (11) Q. When did you start with Old World
- (12) Industries?
- (13) A. August of '98.
- (14) Q. What was your position when you
- (15) started with Old World?
- (16) A. SplitFire Brand Manager.
- (17) Q. Was it at that time you also became a
- (18) SplitFire employee?
- (19) A. Yes.
- (20) Q. What product lines did you manage as
- (21) the SplitFire Brand Manager?
- (22) A. Spark plugs, wire sets.
- (23) Q. Anything else?
- (24) A. No.

BSA

OLD WORLD-SPLITFIRE AND AUTO METER MICHAEL SHERIDAN 6/17/2002

XMAX(25)

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- (1) guess.
- (2) Q. That curves besides the bezel and
- (3) contacts the casing, correct?
- (4) A. Yes.
- (5) Q. And those are the only two aspects of
- (6) the Super Bezel that actually hold the glass on
- (7) the case, correct?
- (8) A. I believe so.
- (9) Q. And you could cut that bezel in half
- (10) and it would be equally good holding the -
- (11) A. Holding the glass in place?
- (12) Q. Yes.
- (13) A. Yes.
- (14) Q. Okay. In fact, as far as the function
- (15) of holding glasses in place, it has nothing to
- (16) do with the height of the bezel, correct?
- (17) A. Yes, that's correct.
- (18) Q. It has nothing to do with the
- (19) curvature on the outside of the bezel?
- (20) A. Correct.
- (21) Q. It has nothing to do with the
- (22) curvature of the inside of the bezel?
- (23) A. Correct.
- (24) Q. Now, you also state that the Super

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- (1) Bezel reduces the likelihood that the
- (2) protective cover will break. Do you see that
- (3) in your notice of opposition?
- (4) A. Which number are you at?
- (5) Q. That would be paragraph 14.
- (6) A. Yes, I see that.
- (7) Q. And the protective cover you are
- (8) talking about is the glass, correct?
- (9) A. Correct.
- (10) Q. All right. Now, the part of the Super
- (11) Bezel that supposedly reduces breakage on the
- (12) face relates to the height of the bezel,
- (13) correct?
- (14) A. The depth, yes, absolutely.
- (15) Q. And the function of protecting the
- (16) cover is served by any portion of the bezel
- (17) that is above the face of the cover, correct?
- (18) A. Yes.
- (19) Q. It could be a 16th of an inch?
- (20) A. It could.
- (21) Q. All right. In fact, whether it is
- (22) tall, or short, as long as it's above the face
- (23) of the bezel it could serve that function,
- (24) correct?

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- (1) A. It may, in some instances.
- (2) Q. So that this particular height of the
- (3) Super Bezel is not determinative of the
- (4) function of protecting the cover?
- (5) A. Somewhat, I think that is limiting.
- (6) Q. So you could cut that bezel in half,
- (7) and cut it by a third, you could cut it by ten
- (8) times?
- (9) A. Anything above the height of the
- (10) glass.
- (11) Q. So the particular height of the bezel
- (12) isn't important in the function of protecting
- (13) the cover as long as it's higher than the
- (14) glass?
- (15) A. I agree somewhat.
- (16) Q. And the curvature of the outside of
- (17) the bezel has nothing to do with protecting the
- (18) glass, correct?
- (19) A. I agree.
- (20) Q. And the curvature of the inside has
- (21) nothing to do with protecting the glass?
- (22) A. Right.
- (23) Q. Now, in your notice of opposition you
- (24) don't say anything about glare. But I

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- (1) understand from your testimony and from other
- (2) statements by SplitFire and Old World that the
- (3) glare is another function?
- (4) A. It is a function of the height. It
- (5) helps to cut glare down.
- (6) Q. And what is the basis for saying that
- (7) the bezel has any effect on glare?
- (8) A. Well, you are in a dash situation. If
- (9) you were driving in your car you would have a,
- (10) we talked about OEs for a little while. The OE
- (11) dash has a cover over the top of it, if you
- (12) will, on many designs.
- (13) And that's the same principle, is to
- (14) reduce the glare from direct sunlight or
- (15) indirect sunlight, bright light, if you will.
- (16) You are bouncing against, if it is clean, a
- (17) fairly glare producing material, being glass.
- (18) And the higher the bezel the more of a shadow
- (19) you can cast on that glass.
- (20) Q. Have you done any engineering studies
- (21) to determine whether the Super Bezel is better
- (22) or worse in protecting against glare as other
- (23) bezel designs?
- (24) A. No, just from a practical standpoint.

BSA

OLD WORLD-SPLITFIRE AND AUTO METER MICHAEL SHERIDAN 6/17/2002

XMAX(27)

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- (1) Q. Do you have any background from a
- (2) scientific or a practical standpoint that would
- (3) allow you to say that the Super Bezel is better
- (4) at preventing glare than other bezel designs?
- (5) A. No.
- (6) Q. So as far as the glare protection
- (7) aspect, that is an assumption on your part,
- (8) that it is better at protecting glare than
- (9) other bezel designs?
- (10) A. Practical assumption.
- (11) Q. And the fact that it protects glare in
- (12) your view is because it is raised above the
- (13) face of the glass?
- (14) A. Absolutely.
- (15) Q. So any bezel that is raised above the
- (16) face of the glass would have a glare?
- (17) A. It would help.
- (18) Q. All right. Now, what I don't see in
- (19) any of your statements here is the
- (20) disadvantages of the Super Bezel. Are you
- (21) aware of any disadvantages of the Super Bezel?
- (22) A. No.
- (23) Q. How about collecting dirt, that's a
- (24) disadvantage, isn't it?

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- (1) A. Any flat surface in a car collects
- (2) dirt.
- (3) Q. And the Super Bezel is raised off the
- (4) face of the glass, isn't it?
- (5) A. It comes tight to the glass. They
- (6) connect. I mean, let's face it, the inside of
- (7) the bezel on any meter is touching the glass.
- (8) Q. I didn't ask a very good question.
- (9) The height of the bezel raises it above the
- (10) surface of the glass, right?
- (11) A. Yes.
- (12) Q. And when it is mounted in a car that
- (13) bezel itself can collect dirt and debris?
- (14) A. Absolutely.
- (15) Q. And in fact, it will collect more dirt
- (16) and debris if it is taller, higher than the
- (17) glass?
- (18) A. Correct.
- (19) Q. Than one that would be shorter?
- (20) A. Yes.
- (21) Q. And that would be a disadvantage of
- (22) the Super Bezel compared to bezels that are
- (23) shorter?
- (24) A. Correct.

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- (1) Q. And the Super Bezel also blocks light,
- (2) blocks the view of the gauge if it is set at an
- (3) angle from the driver, isn't that right?
- (4) A. I don't believe that to be true.
- (5) Q. Have you ever seen one of these gauges
- (6) set up in a car?
- (7) A. Sure.
- (8) Q. Have you actually sat in the driver's
- (9) seat and looked at the gauges?
- (10) A. Sure.
- (11) Q. And have you seen a setup where all
- (12) the gauges were mounted flat against the view?
- (13) A. Like a race car, absolutely.
- (14) Q. And have you noticed that the Super
- (15) Bezel can block the view of the gauge?
- (16) A. Not sitting in the seat. Maybe
- (17) looking in from, you know, if you looked into a
- (18) car from standing outside of it that could be
- (19) an issue.
- (20) Q. And the Super Bezel would block the
- (21) view of the gauge more than a bezel that was
- (22) shorter, for example?
- (23) A. It may.
- (24) Q. The Super Bezel is, in fact the

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- (1) SplitFire bezel is made out of aluminum
- (2) material?
- (3) A. Brushed aluminum.
- (4) Q. And if you made either one of those
- (5) bezels smaller and flatter it would take less
- (6) material to make the bezel, isn't that right?
- (7) A. It might, yes.
- (8) Q. So these two bezels are more expensive
- (9) than the smaller, flatter bezels, isn't that
- (10) right?
- (11) A. From a materials standpoint, yes.
- (12) Q. Are you familiar with the tooling that
- (13) is used to make these two bezels?
- (14) A. No. I believe it is a press, it
- (15) presses it down.
- (16) Q. And are you familiar with the amount
- (17) of wear that is incurred during the manufacture
- (18) of these bezels?
- (19) A. No.
- (20) Q. So you don't know whether it is more
- (21) expensive to manufacture these bezels from the
- (22) toolmaker's standpoint than the smaller,
- (23) flatter bezels?
- (24) A. No, I don't know that.

BSA

OLD WORLD-SPLITFIRE AND AUTO METER MICHAEL SHERIDAN 6/17/2002

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- (1) anyone else has trademark rights to the bezel
- (2) shown in that SAE document?
- (3) A. No, I don't believe that to be true.
- (4) Q. I am not sure if we have too many notes
- (5) in that. Let me ask that question again. It
- (6) is your understanding that there are no
- (7) trademark rights to the bezel shown in the SAE
- (8) document?
- (9) A. Correct.
- (10) Q. On the Stewart Warner and the SAE
- (11) bezel, that also has the function of holding
- (12) the glass in place, correct?
- (13) A. Correct.
- (14) Q. And it has a construction for holding
- (15) the glass in place that is different than the
- (16) Auto Meter construction, isn't that right?
- (17) A. Yes.
- (18) Q. All right. And it also has a raised
- (19) portion, true?
- (20) A. Somewhat.
- (21) Q. And that raised portion protects the
- (22) glass from injury?
- (23) A. Probably less than the, the higher you
- (24) go the more protection it is going to offer the

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- (1) glass.
- (2) Q. It has a raised portion that protects
- (3) glass from injury?
- (4) A. Correct.
- (5) Q. And also that raised portion would
- (6) also reduce glare, true?
- (7) A. This will probably reduce no glare.
- (8) Q. And why do you say that?
- (9) A. It is not deep enough.
- (10) Q. Do you have any scientific evidence or
- (11) studies to show that it is better or worse?
- (12) A. No, I do not.
- (13) Q. As far as the glare blocking ability
- (14) of any of the bezels that you have seen, you
- (15) have done no studies to establish that they do
- (16) block glare when they are installed in an
- (17) automobile?
- (18) A. The direct light right there, you tell
- (19) me which one is causing more of a shadow? I
- (20) can't get the light exactly.
- (21) Q. I don't want to testify. But my
- (22) question is you have done no studies?
- (23) A. No, I have not.
- (24) Q. You haven't studied them in a car,

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- (1) actually mounted in a car to determine whether
- (2) in fact they're blocking glare?
- (3) A. No.
- (4) Q. Now, as far as the ability to prevent
- (5) damage to the glass, have you done any studies,
- (6) or is there any evidence that Old World or
- (7) SplitFire has available to them that the bezel
- (8) they use or any of these bezels, actually,
- (9) protect their covers from damage?
- (10) A. No.
- (11) Q. Have you received instruments with
- (12) broken covers?
- (13) A. No, sir.
- (14) Q. Have you done - all right. So you
- (15) never had a broken instrument to try to
- (16) determine how the damage occurred?
- (17) A. No, sir.
- (18) Q. So would it be fair to say that Old
- (19) World and SplitFire have no evidence that in
- (20) fact any of these bezels really do protect
- (21) against damage when they are in use?
- (22) A. Correct.
- (23) Q. And they are in packages while they
- (24) sit on the shelf?

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- (1) A. Correct.
- (2) Q. And the packages are designed to
- (3) protect the entire instrument from damage?
- (4) A. Yes.
- (5) Q. And in the packages the bezels aren't
- (6) going to be protecting anything from damage,
- (7) that's what the packaging is supposed to do?
- (8) A. Yes.
- (9) Q. I am going to mark a few other
- (10) instruments here and ask you if you recognize
- (11) these. Before I get to that, is Stewart
- (12) Warner's product still being sold?
- (13) A. To the best of my knowledge, yes.
- (14) Q. It is one of your competitors?
- (15) A. I would say yes.
- (16) Q. All right. And you don't have any
- (17) information suggesting that the Stewart Warner
- (18) instrument with a bezel that we see here, the
- (19) SAE bezel, is anymore desirable or less
- (20) desirable to purchasers, do you?
- (21) A. No.
- (22) MR. PETTI: All right, I'll mark as
- (23) Exhibit AM-16 an oil gauge with the name Sunpro
- (24) on it.

**APPLICANT'S RESPONSE TO OPPOSER
OLD WORLD INDUSTRIES, INC.'S
FIRST SET OF INTERROGATORIES
(pages 1, 4, and 9-11 only)**

EXHIBIT 7

7
Attorney Docket No. 7222-69477

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 75/457,081:

MISCELLANEOUS DESIGN
(Super Bezel)Published in the Official Gazette of June 5, 2001 in International Class 9

OLD WORLD INDUSTRIES, INC.,)

and)

SPLITFIRE INTERNATIONAL, INC.)

Opposers)

AUTO METER PRODUCTS, INC.,)

Applicant.)

Opposition No. 150,094

**APPLICANT'S RESPONSE TO OPPOSER OLD WORLD
INDUSTRIES, INC.'S FIRST SET OF INTERROGATORIES**

Applicant, Auto Meter Products, Inc., ("Auto Meter") provides the following response to Old World Industries, Inc.'s First Set of Interrogatories to Applicant, through undersigned counsel subject to the following general and specific objections.

GENERAL OBJECTIONS

1. Auto Meter objects to the definitions and instructions to the extent that they exceed the requirements of the Federal Rules of Civil Procedure. In particular, Auto Meter objects to providing supplemental responses to the extent they are not required by Federal Rules of Civil Procedure 26(e)

RESPONSE:

Subject to the general objections above, the Super Bezel mark was developed and first used by Auto Meter in connection with automotive gauges and tachometers since at least as early as 1968 and was used in commerce at least as early as 1968.

3. Identify the persons most knowledgeable about applicant's adoption and use of the Bezel Design.

RESPONSE:

Auto Meter identifies John V. Westberg.

4. Identify the persons most knowledgeable about applicant's marketing and sales of products incorporating the Bezel Design.

RESPONSE:

Auto Meter identifies John V. Westberg and Rolan Worthan.

5. Identify each person participating in the preparation or approval of advertisements or promotions of products that applicant sells that incorporate the Bezel Design.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome because it calls for the identity of every person and/or company involved with the advertisement and promotion of Auto Meter's products, including those using the Super Bezel mark, for over the past thirty years. Subject to the foregoing and general objections above, Auto Meter identifies John V. Westberg and Rolan Worthan as knowledgeable concerning Auto Meter's advertising and promotions of Auto Meter's products featuring the Super Bezel mark.

6. State the amount of money, by year, that applicant has spent or plans to spend for each type of advertising or promotion applicant has used or plans to use in connection with products incorporating the Bezel Design.

the end user consumers, such as racing teams, and other automobile owners and operators. Examples of retailers that sell Auto Meter products are Summit, Jeg's, Keystone, Reliable, Arrow and Competition Specialties. A detailed list of Auto Meter's customers is highly confidential business information, and, based on Opposer's disclosed contentions, is not relevant to this opposition.

16. Identify all known purchasers of any product applicant sells that incorporates the Bezel Design, including dealers, distributors and end-users.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome since "all known purchasers" is virtually limitless. The request further calls for information subject to the work product doctrine and calls for highly confidential business information that is not relevant to this case based on Opposer's disclosed contentions. Subject to the foregoing objections and general objections, see response to Interrogatory No. 15.

17. Identify all expert witnesses applicant anticipates calling to testify at any trial or hearing in this action and the anticipated subject matter(s) of each such person's testimony.

RESPONSE:

Objection. This interrogatory is premature and calls for privileged information and work product. Auto Meter will identify expert witnesses as required under Fed.R.Civ. P. 26, should such expert testimony be required after further discovery of Opposer's contentions and the factual bases therefor.

18. Identify all percipient witnesses applicant anticipates calling to testify at any trial or hearing in this action and the anticipated subject matter(s) of each such person's testimony.

RESPONSE:

Objection. This interrogatory is premature and calls for privileged information and work product. Subject to the foregoing and general objections above, Auto Meter expects to call one or more of the above-identified Auto Meter officers/employees at trial. Auto Meter will supplement this response as may be required under Fed. R. Civ. P. 26, if necessary, after further discovery of Defendant's contentions and the factual bases therefor.

19. Identify all individuals with knowledge of matters related to any issue in this proceeding and the subjects on which they are knowledgeable.

RESPONSE:

Objection. This interrogatory is overly broad and unduly burdensome since "matters related to any issue in this proceeding" is virtually limitless. Subject to the foregoing and general objections above, see the above-identified Auto Meter officers/employees and George Russell, Corporate Legal Administrator for Auto Meter.

20. Identify any utility or design patent known to applicant that relates to the Bezel Design.

RESPONSE:

None.

21. Identify each person who provided information or documents for responses to the above interrogatories or to opposer's requests for production of documents.

RESPONSE:

Applicant identifies John V. Westberg and George Russell.

AS TO OBJECTIONS:

Auto Meter Products Inc.

Date: February 28, 2002

By: 

Philip T. Petti
Sandra V. Scavo

Fitch, Even, Tabin & Flannery
120 South LaSalle Street
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Attorneys for Applicant

271097

JUNE 24, 2002 DEPOSITION TRANSCRIPT
OF JOHN WESTBERG
(pages 81-88 only)

EXHIBIT 8

In The Matter Of:

**OLD WORLD INDUSTRIES v. AUTO METERS PRODUCTS
CONTAINS TRADE SECRET/COMMERCIALY SENSITIVE**

JOHN WESTBERG

June 24, 2002

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OLD WORLD INDUSTRIES v. AUTO METERS PRODUCTS
CONTAINS TRADE SECRET/COMMERCIALY SENSITIVE

JOHN WESTBERG
June 24, 2002

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[1] Q: Getting back to the SAE standards, the
 [2] SAE promulgates these guidelines for design of
 [3] instruments?
 [4] A: Yes.
 [5] Q: In order to be compliant with the SAE
 [6] guidelines, do you have to precisely meet each
 [7] one of them or - well, do you have to precisely
 [8] meet each one of them?
 [9] A: Well, should I address that in terms of
 [10] the bezel?
 [11] Q: Just address it generally, just address
 [12] it generally.
 [13] A: There's so many aspects of design, you
 [14] know. We talk about threads. You know, I mean
 [15] you can get into so many aspects that it would be
 [16] hard to answer. If you would like -
 [17] Q: Well, let me try asking a question
 [18] another way or asking a different question. Can
 [19] one improve - strike that.
 [20] Can one design an instrument which
 [21] performs better than the SAE guidelines or has
 [22] characteristics that are superior to the SAE
 [23] guidelines and still be considered compliant with
 [24] the SAE guidelines?

[1] meter or gauge that the glass plate on the gauge
 [2] remain intact?
 [3] A: Yes.
 [4] Q: Why is that important?
 [5] A: Well, it's important to keep dirt out,
 [6] moisture.
 [7] Q: Okay. Does a higher bezel help protect
 [8] the glass from damage from surface impacts?
 [9] A: From our experience, most glass
 [10] breakage comes from some sort of frontal impact.
 [11] The bezel has no effect as far as protecting the
 [12] glass. And we see just as much breakage with the
 [13] Super Bezel as we would see with the SAE bezel.
 [14] Q: Has Auto Meter actually done studies to
 [15] determine this?
 [16] A: I can't really - I'm not aware of what
 [17] sort of studies we've had on that. I do know we
 [18] get significant - I mean, we do get glass
 [19] breakage with the Super Bezel. And I had asked
 [20] our repair manager, you know, if something hit as
 [21] you showed across the bezel, which would be kind
 [22] of a rare thing, if it's enough - the bezel is
 [23] quite soft, it's aluminum, and it would offer
 [24] little protection and the chances are it's still

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[1] A: I would believe so, although you'd have
 [2] to prove that, that it was better. The SAE
 [3] guidelines are there based on experience. If you
 [4] could design within their guidelines, experience
 [5] has shown that you have a better product.
 [6] I might just say in terms of the bezel
 [7] design, if you look at the handbook, SAE
 [8] handbook, in regards to the height of the bezel,
 [9] they show a maximum dimension. In other words,
 [10] they recommend it should not protrude out any
 [11] farther than what they show as a maximum. And
 [12] there's reasons for that; for viewability, as the
 [13] bezel protrudes farther, the viewing becomes more
 [14] difficult. If the bezel is mounted in the flat
 [15] sort of application, which many times they are,
 [16] they can hold more water and tend to cause
 [17] leakage.
 [18] So for various reasons over years of
 [19] experience, they have established guidelines.
 [20] And like I said, the bezel itself is recommended
 [21] a certain maximum height and no higher, which the
 [22] SAE bezel is fairly low as far as protruding from
 [23] the glass.
 [24] Q: Is it important for the function of a

[1] going to break the glass. So we can't - we've
 [2] never seen it as any sort of protection.
 [3] Q: Now, there are a number of different
 [4] ways that glass can break, correct, in the
 [5] sense - well, glass can crack, correct?
 [6] A: It depends on how hard you hit it.
 [7] Q: Or shatter?
 [8] A: Right.
 [9] Q: The breakage that you see on
 [10] instruments that have the Super Bezel, is it
 [11] generally more cracking or shattering?
 [12] A: Well, cracking or shattering depends on
 [13] how hard it's hit. And we would see - the glass
 [14] breakage with the SAE bezel would be the same as
 [15] the glass breakage we see with the Super Bezel.
 [16] In other words, I believe what you're
 [17] getting at is that maybe with the lower bezel we
 [18] see more shattering and with the Super Bezel we'd
 [19] see just a crack. But we see the same breakage
 [20] with the Super Bezel or with the lower bezel. I
 [21] mean, the glass breaks the same way.
 [22] I might just say the one thing we do
 [23] see as far as impacting, the Super Bezel, if
 [24] somebody takes the gauge out or the tachometer

JOHN WESTBERG
June 24, 2002

OLD WORLD INDUSTRIES v. AUTO METERS PRODUCTS
CONTAINS TRADE SECRET/COMMERCIAL SENSITIVE

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[1] and holds it and it slips out of their hand and
[2] drops on the table or whatever before it's
[3] installed, the Super Bezel becomes dented and,
[4] you know, kind of ruined, really, as far as
[5] appearance much quicker, whereas the SAE bezel,
[6] that could be dropped and you don't have a
[7] problem. So we actually have - you know, I
[8] don't know if we've ever seen an SAE bezel come
[9] back damaged. But we do get people return the
[10] Super Bezel because it got dented. It's just
[11] kind of - it's like too big and too easy to
[12] hit. So it's really more of a detriment.
[13] Q: Is it important for the use of the
[14] instrument to reduce glare?
[15] A: Would you restate that again?
[16] Q: In using - when a driver uses - has
[17] these instruments in their car and is racing or
[18] driving, is it important for them to be able to
[19] read the gauge?
[20] A: Yes.
[21] Q: Does glare reduce the readability of
[22] the gauge?
[23] A: When glare occurs it does.
[24] Q: Okay. What are the different means for

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[1] who is over at the same angle. So that light
[2] that comes in from the top of the windshield with
[3] an SAE bezel that lights the dial better, in
[4] order to see that glare, you'd have to be down
[5] underneath the steering wheel down by your brake
[6] pedal to see the sun. It's just like seeing
[7] somebody over to the side with the mirror, you
[8] know, if you stand off to the side. Whereas the
[9] only glare that the driver can see if you have
[10] the instrument aimed towards you is the light
[11] that is behind you. In other words, you have to
[12] have that same angle. If you're looking at it
[13] maybe 10 degrees off, the light would be
[14] 10 degrees off the other side would be the
[15] light - the glare that you would see, but the
[16] bezel can't block that light.
[17] Actually, if you were to make drawings
[18] of this, you would find that you lose more
[19] visibility of the dial than what you gain in
[20] glare. What I have seen is that you can lose the
[21] visibility of the whole numbers and division on
[22] one side. Let's say it's off to the right, you
[23] could lose visibility of the whole left portion
[24] of the numbers and divisions, while as far as

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[1] reducing glare in an automotive instrument?
[2] A: Well, one possibility is use a frosted
[3] glass, but that almost - you lose almost as much
[4] in the nonglare as what you gain. There are
[5] mechanical designs in new cars to reduce glare.
[6] The bezel itself does not reduce glare and
[7] actually inhibits some of the lighting of the
[8] dial during day, daytime.
[9] If you had two tachometers mounted on
[10] the dash, SAE bezel and the Super Bezel, light
[11] comes from the windshield during the daytime to
[12] light that dial. The SAE bezel would have better
[13] lighting of the dial because it's not shaded from
[14] the sun whereas the Super Bezel would tend to
[15] cause a shadow on the top part and make it not as
[16] easy to see. Now, the glare that would come off
[17] that sun with the SAE bezel being not shaded,
[18] it's the law of physics, the law of light that
[19] the angle of incidence that that light comes at
[20] is equal to the angle of reflection.
[21] In other words, if you look in a
[22] mirror, if you stand straight in front of it, you
[23] can see yourself. If you get off to the side,
[24] you can't see yourself but you can see somebody

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[1] glare, that light that may be coming from the
[2] back on the side is maybe an eighth-inch glare, I
[3] mean, no protection. I mean, you lose actually
[4] more visibility in the dial than you could ever
[5] get any glare protection, which is why SAE says
[6] that there's a maximum amount of protrusion, if
[7] you look at that handbook. They say it shouldn't
[8] come out farther than so much because you
[9] actually lose more visibility than what you gain.
[10] Q: You said this instrument is made out of
[11] aluminum, the one shown in Exhibit AM-7?
[12] A: That bezel is aluminum.
[13] Q: Is the Super Bezel typically made in
[14] aluminum?
[15] A: Probably in most cases.
[16] Q: Is any dying or coloring done to the
[17] Super Bezel after - let me strike that and ask
[18] the question a different way.
[19] How is the Super Bezel actually made or
[20] formed?
[21] A: Well, there's a die that's made that
[22] forms the metal from a flat strip.
[23] Q: That's die?
[24] A: Die, right. That's standard

**OPPOSER'S SUPPLEMENTAL ANSWER
TO APPLICANT'S INTERROGATORY NO. 25**

EXHIBIT 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 75/457,081:

MISCELLANEOUS DESIGN
(Bezel)

Published in the Official Gazette of June 5, 2001 in International Class 9

OLD WORLD INDUSTRIES, INC.,)

and)

SPLITFIRE INTERNATIONAL, INC.)

Opposers)

Opposition No. 150,094

AUTO METER PRODUCTS, INC.,)

Applicant.)

**OPPOSER'S SUPPLEMENTAL ANSWER
TO APPLICANT'S INTERROGATORY NO. 25**

Opposers Old World Industries, Inc. and Splitfire International, Inc. ("opposers"),
restate and stand by their previously-stated General Objections to applicant's
interrogatories.

Interrogatory No. 25

Identify all experts which have at any time been retained by Splitfire for
this Opposition, including their opinions and supporting bases and all
documents and information considered by the experts.

ANSWER

Opposers object to this interrogatory to the extent it seeks information about consulting
experts, whose identity is protected by the work product doctrine. Subject to and without
waiving this objection, opposers intend to rely on the testimony of the following expert
witness:

Professor Yoram (Jerry) Wind
The Lauder Professor, Professor of Marketing
The Wharton School of the University of Pennsylvania

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I hereby certify that this correspondence is being deposited with the United States Postal
Service as first class mail in an envelope addressed to: Commissioner for Trademarks, Attn: BOX
TTAB NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on June 6, 2002.

At this time, Professor Wind has not reached any final conclusions in this matter. Although it is not possible at this time to identify all of the documents and information considered by Professor Wind, the documents on which he will rely will include Documents No. AMP001692-001740, produced by applicant.

PATTISHALL, McAULIFFE, NEWBURY,
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By 

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Attorneys for Opposers Splitfire
International, Inc. and Old World
Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S
SUPPLEMENTAL ANSWER TO APPLICANT'S INTERROGATORY NO. 25 was
served upon:

Philip T. Petti, Esq.
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via facsimile to (312) 577-7007 and first class mail on the 6th day of June, 2002.



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MESSAGE:

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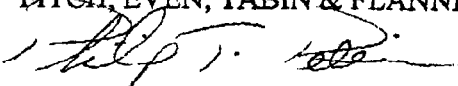
Re: **Old World Industries, Inc. and Splitfire
International, Inc. v. Auto Meter Products, Inc.
Opposition No. 150,094
Our File No.: 7222-69477**

Dear Mr. Mermelstein:

Enclosed please find Applicant's Motion to Strike Notice of Testimony Deposition of Ram Date and For Entry of Protective Order for the above-referenced opposition. This Motion is being filed with the Trademark Trial and Appeal Board to prevent the testimony deposition of Opposers' expert scheduled for **March 14, 2003**. Applicant respectfully requests a telephonic hearing with the interlocutory attorney and Opposers in advance of that date.

Very truly yours,

FITCH, EVEN, TABIN & FLANNERY


Philip T. Petti

PTP/SVS/naf/306461
encl.

cc: Sanjiv Sarwate